IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1087 OF 1986

1. Dharma Radhya Vartha
2. Raja Ziparya Vanga,
   deceased, by his L.R.
   Babu Raja Vanga,
3. Govind Raja Sahane, since
   deceased by his L.R.
   Smt. Yamuna Kashinath Dhapshi,
4. Devya Barkya Varkhanda,
   deceased, by his L.Rs.
   a) Chandrya Devya Varkhanda,
   b) Sakharam Devya Varkhanda,
   c) Smt.Thakibai Devya Varkhanda,
5. Chinta Rama Vartha,
6. Laxya Radhya Valvi, since
   deceased, by his L.Rs.
   a) Shankar Lakshya Dalvi
      alias Valvi,
   b) Kamalakar Lakshya Dalvi
      alias Valvi,
   c) Devya Lakshya Dalvi

alias Valvi,

d) Chandrakant Bhiva Dalvi
alias Valvi,

7. Kanhya Budhya Vartha, since deceased, by his L.Rs.
a) Vithal Kanhya Vartha,
b) Kamalakar Kanhya Vartha,
c) Smt.Laxmi Narayan Dalvi,
d) Smt.Kamli Kanhya Vartha,

8. Chinta Narya Varne, deceased by his L.Rs. Kanhya Narya Varane,

9. Rama Zipar Vartha, deceased by his L.Rs. Smt.Narshi Rama Vartha,

10. Marhya Barkya Gadag, deceased by his L.Rs.
a) Jana Marhya Gadag,
b) Chinta Marhya Gadag,
c) Laxman Marhya Gadag,
d) Smt. Maina Marya Gadag,

11. Dharma Govind Ambat, deceased by his L.Rs.
a) Ramji Dharma Ambat,
b) Sitaram Dharma Ambat,
c) Smt.Devibai Dharma Ambat,

d) Smt. Gangibai Laxma Ambat,
(dead - deleted)
e) Smt.Somnari Rama Ravtya,
f) Smt. Kamli Dharma Ambat,

12. Mahadya Vithya Vartha, deceased
by his L.Rs.
a) Kashinath Mahadya Vartha,
b) Vishnu Mahadya Vartha,
c) Smt.Yamuna Mahadya Vartha,

13. Narsha Maoji Guhe, since
deceased, by his L.Rs.
a) Janu Narshya Guhe,
b) Babalya Dharma Guhe. ... Petitioners

versus

1. Ramesh Vrijlal Shah,
2. Vrajlal Narshilal Shah,
deceased, by his L.Rs.
a) Ramesh Vrajlal Shah,
b) Smt.Narmada Vrajlal Shah,
c) Smt. Mangala Shantilal Shah ... Respondents

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Mr. A.J. Joshi, for the Petitioners.
Mr. K.S. Badti, for the Respondents.

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CORAM : A.M.KHANWILKAR,J.

22nd March 2005

ORAL JUDGMENT :

1. This writ petition takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal dated October 25, 1985, in Revision No. Ten.A.169 of 1983.

2. Briefly stated, the lands in question are agricultural lands. In the present proceedings, the respective Petitioners claim to be in occupation of the lands, which were subject matter of applications under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, preferred by the Petitioners for declaration that they were tenants in respect of the said lands. The holding of the respective Petitioners as against the concerned land claimed by them is as follows.

Sr.No.	Name of the Petnr.	Land involved in the suit village Gargaon

	S.No.	Hissa	Area Ac.- Guns.
1. Dharma Raghya Varatha	39		1-25-0
2. Raja Ziparya Vanga	37	1	6-19-0
3. Devya Barka Varkhanda	94	2	0-03-0
	5	2	0-02-4
	7	10	0-11-8
	12	8	0-11-8
	39	7	0-21-8
	39	10	2-19-0
	57	6	0-06-0
4. Chintu Dama Varatha	17	2	0-39-4
	29	6	0-03-12
	30	1	0-02-8
	30	6	0-0-12
	31	2	0-1-0
	31	5	0-3-0
	37	5	0-11-0
	37	10	0-26-0
5. Laxya Raghya Dalvi	2	1	0-6-12
	3	2	0-36-12

		33	3	2-1-0
		39	1	3-1-0
		58	2	1-4-12
6.	Chintu Narya Warare	31	7	1-15-0
		37	13	0-18-0
		50	2	0-33-0
7.	Rama Zipra Varatha	31	1	0-1-0
		31	4	0-3-0
		31	7	0-2-0
		32	1	0-23-0
		33	2	0-3-0
		34	1	2-18-0
		37	11	1-4-0
8.	Narshya Mavji Guhya	46	2	2-20-0
9.	Kanya Badhya Varatha	30	7	0-34-0
		31	1	0-13-8
		31	6	0-7-0
		34	2	0-23-0
		32	2	0-27-12
10.	Marya Barkya Gadag	2	2	0-19-4

	3	1	0-20-8
	33	1	2-6-0
	39	2	0-7-0
	58	1	0-5-0
11. Dharma Govind Ambat	3	3	0-9-4
	3	5	0-37-12
	3	9	0-3-4
	4	1	0-6-0
	39	3	0-31-0
	39	5	0-17-8
	56	2	0-9-0
	56	3	0-16-0
	57	2	0-30-12
12. Madhya Vitha Varatha	36	Pan	0-10

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3. The Petitioners filed 13 separate applications under section 70(b) of the Act for declaration that they are tenants in respect of the above suit lands. The Petitioners are tribals and illiterate persons. They claimed that since their forefathers, for over 50 years, they were cultivating lands as tenants and the

portion of the said lands, which are now described as the suit lands, were being used for incidental agricultural activity for the purpose of rab manure. It is not in dispute that proceedings under section 32G of the Act in respect of the kharif lands which were cultivated by the Petitioners since their forefathers have already culminated with an order in favour of the Petitioners declaring them deemed purchasers thereof. The Petitioners have already purchased the said lands. It appears that during the said proceedings, the statement of the Petitioners came to be recorded that they were not holding any other land for agricultural purpose as tenants. On that basis, final orders under section 32G came to be passed in favour of the Petitioners and which have been accepted by both the parties. However, in the present proceedings under section 70(b) of the Act filed by the Petitioners, it is the case of the Petitioners that, in addition to the kharif lands, which were under cultivation of the Petitioners, of which they have now been declared as owners, they were also in occupation of the suit lands, where the incidental agricultural activity was carried on,

in particular for the purpose of rab manure. On that basis, it is asserted that since the Petitioners were in occupation of the said lands since their forefathers for over 50 years, they have become tenants even in respect of the suit lands, which are adjoining the kharif lands, of which they have been already declared as owners. The cause for filing the said applications was that the Respondents, after death of their predecessors started disturbing possession of the Petitioners in respect of the suit lands some time in 1968. Accordingly, the Petitioners filed separate 13 applications under section 70(b) of the Act as aforesaid. Initially, the Petitioners had filed 18 applications; however, five applications were withdrawn and only 13 applications proceeded with pertaining to the suit lands.

4. It is the case of the Petitioners that common rent receipt was issued to their forefathers which not only included kharif lands, but also paddy lands or grass lands, i.e., the suit lands, which were used for rab manure. The Petitioners to support their version that they

were in occupation of the suit lands relied on the statement of Talathi and maps of the suit lands in their possession including Form No.XII as prepared and forwarded to D.I.L.R. for village record Mutation Entry No. 134.

5. The Additional Tahsildar proceeded with the inquiry. The Respondent No.2 herein remained absent throughout the inquiry. The Additional Tahsildar recorded the evidence and on analysing the materials on record, by his order dated 28th February 1971, held all the four issues in favour of the Petitioners and declared the Petitioners to be tenants in respect of the suit lands. The four issues which were framed for the purpose of inquiry were as follows.

(1) Whether the opponents are the landlords of the suit lands ?

(2) Whether the applicants are cultivating the suit lands ?

(3) Whether the cultivation of the Applicants is lawful ?

(4) Whether the Applicants are the tenants of the suit lands as defined in section 14 of the Bombay Tenancy and Agricultural Lands Act, 1948 ?

This decision of the Additional Tahsildar was questioned by the Respondents by way of appeals before the Sub-Divisional Officer. The Sub-Divisional Officer allowed the appeals preferred by the Respondents and remanded the matter to decide only one issue, as to whether the possession of the Petitioners over the suit lands was lawful. This presupposes that the question whether the Petitioners were in possession of the suit lands was not in issue. The authority was, however, of the view that whether such possession was lawful is a matter of debate and for which reason relegated the parties before the first authority to examine that issue alone on its own merits in accordance with law. While the remand proceedings were pending before the first authority, in the interregnum, on 20th November 1973, the Sub-Divisional Officer, Dahanu, by his order was pleased to set aside

Mutation Entry No. 134 which was in favour of the Petitioners. This decision has not been challenged by the Petitioners and no effect to Hissa Form No.12 was given. However, while the remand proceedings were pending, the Petitioners made application to the D.I.L.R. for getting the suit lands remeasured. When the proceedings were taken up for hearing before the tenancy authority, this fact was brought to the notice of the tenancy authority and request was made that hearing of the matter be deferred awaiting remeasurement of the suit lands to be done by the D.I.L.R. The Advocate appearing for the Respondents had given no objection to accede to the request made on behalf of the Petitioners. However, the authority proceeded with the matter and by order dated 7th August 1975 dismissed the applications preferred by the Petitioners with an observation that the Petitioners may file fresh tenancy application under section 70(b) of the Act after new Hissa Form No.12 is drawn after remeasurement by the D.I.L.R.

6. This decision was challenged by the Petitioners alone before the Sub-Divisional

Officer by way of appeal. The Respondents did not challenge the said decision, nor filed any cross-objection challenging the observation made by the tenancy authority keeping option of filing fresh tenancy application under section 70(b) open to the Petitioners. Be that as it may, the appeal preferred by the Petitioners came to be allowed by order dated 2nd August 1979 and the applications were restored to the file of the first authority to decide in terms of the earlier order dated 7th March 1973 on the issue of whether the possession of the Petitioners in respect of the suit lands was lawful, after giving full opportunity to the parties. When the matter went back before the first authority, the parties did not avail of the opportunity of adducing any further evidence; whereas the decision was invited by the parties on the basis of evidence already on record. Accordingly, the tenancy authority proceeded to decide the application by order dated 17th December 1981. The authority in substance held that the statement made on behalf of the Petitioners in the earlier proceedings pertaining to kharif land under section 32G that except the kharif paddy

lands, they were not cultivating any other land would go against the Petitioners in maintaining the present applications. The authority further held that no independent evidence to show separate tenancy of the suit lands was adduced. It further observed that the evidence which was relied upon by the Petitioners cannot be taken into account as the mutation entry has been set aside. It further observed that the possession of the Petitioners over the suit lands appears to have been recorded in February 1961, but the area in possession of the Petitioners was not tallying with the area shown in the record prepared by the survey party. It further held that no evidence has been produced by the Petitioners to show that they were put in possession by the Respondents in particular area and that they had paid rent in respect of the suit lands or shown existence of relationship of contractual tenancy or any record to support the position that they were cultivating the suit lands as tenants. It further observed that the evidence would, however, show that the Petitioners had taken forcible possession of the suit lands. The plea taken by the Petitioners that it was not open to

the Respondents to challenge the possession of the Petitioners because they had not resorted to suit for possession or appropriate reliefs against the Petitioners and inaction of the Respondents in that behalf will validate the possession of the Petitioners was negatived. Broadly, on the above reasoning, the first authority proceeded to hold that the possession of the Petitioners in respect of the suit lands was not lawful.

7. This decision dated 8th March 1982 passed by the first authority was carried in appeal by the Petitioners. The appellate authority by judgment dated 25th March 1983, however, proceeded to allow the appeal preferred by the Petitioners. The appellate authority on appreciation of evidence on record, in the first place, held that the possession of the Petitioners in the suit lands was admitted. The only question was whether the said possession was unlawful or lawful. It then proceeded to hold that the Petitioners are illiterate poor Adiwasis and the matter will have to be examined in that perspective. It is then observed that the fact

that the Petitioners were in possession of kharif paddy lands was not in dispute and, in fact, they have been declared purchasers thereof. It is then observed that it is common knowledge that whenever there is paddy land cultivated by the tillers, there has to be warkas land attached to it for the purpose of rab manure which is the traditional device of manuring in Konkan Region, where the suit lands are situated. The appellate authority, therefore, proceeded to hold that the possession of the suit lands held by the Petitioners was lawful. Indeed, the appellate authority has gone further to observe that the Respondents failed to adduce any evidence to show that they were taking away grass grown on the suit lands for sale. The appellate authority has also referred to Hissa Form No. 12 to draw support for the conclusion that the Petitioners' possession was lawful.

8. The decision of the appellate authority dated 25th March 1983 was challenged by the Respondent No.1 and Smt.Narmada Vrajlal Shah, who was arrayed as Respondent No.2(b) in the present writ petition by way of revision application.

The revisional authority reappreciated the evidence on record and reversed the finding of fact reached by the appellate authority, which was the final fact finding Court. The revisional authority, instead, took the view that since the Petitioners were not able to establish from the record the exact area of the suit lands in their possession and the identity of the lands was also not proper; and relying on the admission of the Petitioners in the earlier proceedings that they did not hold any other land except the kharif paddy lands for cultivation, held that their possession in the suit lands was illegal since its inception and by efflux of time, that will not become lawful. It then went on to observe that the records produced by the Petitioners was not authentic and the Hissa Form cannot be taken into account as the subject mutation entry was set aside. It is further observed that the Petitioners have not produced any lease deed or rent receipt nor their names appear against the suit lands as tenants in the record for the year 1955-56. On the above reasoning, the finding reached by the appellate authority in favour of the Petitioners came to be reversed. The

revisional authority also observed that the appellate authority wrongly placed onus on the Respondents to establish the factum whether the possession of the suit lands held by the Petitioners was unlawful. In the circumstances, the revisional authority proceeded to allow the revision preferred by the Respondents by the impugned judgment and order dated 25th October 1985. Against the aforesaid decision, the Petitioners have approached this Court.

9. According to the Petitioners, the revisional Court has exceeded its jurisdiction in reappreciating evidence on record to take a view different than the one taken by the appellate authority, which was the final fact finding authority. Merely because another view was possible, that could not be the basis to interfere in revisional jurisdiction. It is then contended that the limited scope of proceedings was only to ascertain whether the possession of the Petitioners in respect of the suit lands was lawful. It is submitted that the fact that the Petitioners were in possession of the suit lands, in that sense, was not in issue. It is contended

that if the Petitioners are right in their stand that they were cultivating kharif paddy lands, of which they have already been declared as owners, it necessarily follows that they were also in possession of the adjoining lands, which were used for incidental agricultural activity for the purpose of rab manure, being the suit lands; and if it is so, in view of the expansive provisions of the Act, which is a social welfare legislation, the view taken by the appellate authority that it is common knowledge that the land attached to warkas land is used for rab manure which is the traditional device of manuring in Konkan Region where the suit lands are situated, which is on the basis of the legal presumption on account of the definition of "agriculture" in section 2(1) read with section 4 of the Act, is the correct view. It is submitted that the fact that the Petitioners were cultivating the kharif paddy lands since their forefathers for over 50 years was not in issue; and if it is so, it necessarily follows that they were lawfully cultivating the suit lands, which were used for the purpose of rab manure cultivation and, therefore, covered by the

mandate of section 4 of the Act. Besides, it is contended that the Petitioners had not only adduced documentary evidence but also oral evidence and that evidence could not be lightly brushed aside. It was the case of the Petitioners that common rent receipt was issued by the landlord from time to time for the agricultural activities carried on by the Petitioners on kharif paddy lands, as well as the suit lands, which were used for the purpose of rab manure cultivation. It is submitted that, admittedly, the Respondents although claimed to have obstructed lawful possession of the Petitioners in 1968, have not resorted to any civil action against the Petitioners, so as to claim possession in respect of the suit lands. The remedy of the Respondents in respect of the suit lands, is, therefore, extinguished by operation of law and even for that reason, the order in question cannot be sustained. Learned Counsel for the Petitioners placed reliance on the decision of this Court reported in 2004(1) Mh.L.J. 285 in the case of Kishan Ramchandra Kumbhar and others v. Kashinath Bandu Teli and others to buttress his above said submissions.

He further submitted that the authorities below have committed manifest error in relying upon the so-called statement of the Petitioners recorded in section 32G proceedings to hold against the Petitioners, which approach cannot be sustained. Inasmuch as the Petitioners have not been confronted with the said statement, as was required by the provisions of section 145 of the Evidence Act, and, therefore, the same was inadmissible against the Petitioners. It is argued that that was the main reason, which has weighed with the lower Court to hold against the Petitioners and since that reason cannot be sustained in law, the conclusion so reached by the lower Court will have to be set aside. It is also argued that the Tribunal has erroneously proceeded on the basis that the appellate Court proceeded to decide the matter on the basis of circumstantial evidence. It is submitted that, in fact, the appellate Court took notice of certain facts, of which judicial notice can be taken, and proceeded to decide the matter on that basis to answer the question whether the possession of the Petitioners in respect of the suit lands was lawful or otherwise.

10. Counsel for the Respondents, on the other hand, however, contends that the case of the Petitioners was one of contractual tenancy but no documentary evidence has been produced to substantiate that stand. Inasmuch, neither any lease deed nor any rent receipt was produced by the Petitioners to establish their claim. It is further submitted that once the Petitioners had approached the authority with a specific plea of contractual tenancy, then it is not open for the Court to proceed on the reasoning that the Petitioners were deemed tenants within the meaning of section 4 of the Act. It is next contended that the statements of the Petitioners recorded during the earlier proceedings under section 32G would bind the Petitioners and that by itself was good reason to non-suit the Petitioners as has been done by the lower Courts. It is also contended that the grievance regarding reliance placed by the lower Courts on the statements of the Petitioners in proceedings under section 32G of the Act has been made for the first time in writ petition before this Court, for which reason the said contention

cannot be taken into account. It is then contended that there is absolutely no pleading in the application as filed to the effect that suit lands were naturally grown grass lands used for grazing cattles and, therefore, it is not open to the Petitioners to seek relief that they were tenants in respect of the suit lands. It is contended that as the document in the form of mutation entry which was relied by the Petitioners was set aside and no other documentary evidence was relied by the Petitioners to substantiate their stand of lawful possession, the applications as filed by the Petitioners ought to fail. It is submitted that the Petitioners have not led any evidence inspite of the remand with opportunity to adduce further evidence and, therefore, the factum of lawful possession has remained unsubstantiated. According to the Respondents, the Petitioners have encroached upon the suit lands in the year 1968, for which reason, criminal case was registered, but the same ended in acquittal in favour of the Petitioners on account of the tenancy issue pending in respect of the suit lands. On the above submissions, Counsel for the

Respondents would contend that the petition be dismissed with costs being devoid of merits.

11. Having considered the rival submissions and going through the record, the factual position that emerges is that the Petitioners through their forefathers since over 50 years were cultivating the kharif paddy lands. The Petitioners have already been declared owners thereof. In the present proceedings, the claim of the Petitioners is in respect of lands which are adjoining to the said kharif paddy lands. The claim is on the assertion that the suit lands were being used for incidental agricultural activity for the purpose of rab manure cultivation, which being an agricultural activity, the Petitioners will have to be treated as tenants in respect of the suit lands and entitled to purchase the same. The fact that the Petitioners are in possession of some portion of lands besides the kharif paddy lands is not in dispute. This finding has been reached by the final fact finding authority below. The only issue that was to be considered after remand was whether the Petitioners were in lawful

cultivation of that lands (suit lands). To support the case that the Petitioners were in lawful cultivation, they not only produced documentary evidence but also oral evidence. The case of the Petitioners was that common rent receipt was issued by the landlord which enured also in respect of the suit lands. Although this specific stand has been taken before the court below, none of the authorities below have analysed that aspect of the matter. The fact that rent receipt was issued by the landlord is not in dispute. However, according to the landlord, the same was issued in respect of kharif paddy lands only. Be that as it may, the position that emerges is that some piece of land was used for rab manure cultivation, which is the traditional device of manuring in Konkan Region, as has been rightly noted by the appellate authority and this position cannot be disputed. Since it is not the case of the Respondents that rab manure operation was done on the kharif lands itself, it necessarily follows that some other piece of land which was adjoining to kharif paddy land was being used for the purpose of rab manure. The fact that the Petitioners are in

possession of the suit lands is not in dispute. According to the Petitioners, the suit lands were being used for the purpose of rab manure since the time of their forefathers. Once this position is established, then by operation of law, it necessarily follows that since the suit lands were being used for the purpose of rab manure, which is an agricultural activity and done on the suit lands and the suit lands were not personally cultivated by the landlords and the Petitioners do not fall under the excepted category, by virtue of section 4 of the Act, they would be deemed tenants thereof.

12. To get over this position, it was argued that the Petitioners had approached with specific plea that they were contractual tenants and in such a case, it is not open to proceed to hold that they are deemed tenants. However, none of the Courts below have examined the plea of the Petitioners to be one of contractual tenants. The application as filed by the Petitioners, if fairly read, merely proceeds to assert that they were in possession of the suit lands and the suit lands were being used for agricultural activity

for the purpose of rab manure for which reason they were tenants even in respect of the suit lands. Viewed in this perspective, there is no substance in the objection raised on behalf of the Respondents.

13. In matters of the kind with which we are dealing, especially when the Petitioners are illiterate and Adiwasi people, keeping in view that the Act in question is a social welfare legislation, the issue will have to be answered in favour of the Petitioners. Reliance has been rightly placed on the exposition in the case of Kashinath Ramchandra Kumbhar (supra). In my opinion, appellate Court rightly proceeded on the basis that whenever there is paddy land cultivated by the tillers, there has to be warkas land attached to it for the rab manure, the traditional device of manuring in Konkan Region, where the suit lands were situated. Judicial notice can be taken of that fact as has been rightly taken by the appellate authority. The Court would be justified in taking judicial notice of the fact also because of the definition of "agriculture" as envisaged in section 2(1) of

the Act. It provides that agriculture includes horticulture, the raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle, the use of any land, whether or not an appanage to rice or paddy land, for the purpose of rab manure but does not include allied pursuits or the cutting of wood only. It will be useful to refer to the definition of expression "to cultivate" as occurring in section 2(5) of the Act. It, inter alia, postulates to till or husband the land for the purpose of raising or improving agriculture produce or to carry on "any agricultural operation" thereon. In other words, even the Legislature was conscious of the practice prevalent that to cultivate or husband any warkas land, some other land was required to carry out the operation of rab manure, which is the traditional device of manuring and integral part of the agricultural activity. There is nothing on record to indicate that the Respondents have asserted that the area in occupation of the Petitioners out of the suit lands was not fully utilised for the purpose of rab manure, or, in

other words, lesser area was utilised for that purpose. If it is so, as the fact of the Petitioners' possession in respect of the suit lands, since their forefathers, cannot be doubted, and as the lands were being used for the purpose of rab manure, as justifiably claimed by the Petitioners, the Petitioners are entitled for the declaration as prayed under section 70(b) of the Act.

14. The revisional Court may be justified in observing that the appellate court could not have placed reliance on the record, which has been set aside and could not be given effect to. However, even if that document was to be ignored, the fact of possession of the suit lands with the Petitioners as of fact is not in dispute. What is put in issue is whether the possession is lawful. The possession is lawful as discussed earlier. In matters, where the person becomes deemed tenant, the old fashion notion of the law of landlord and tenant which required the entries in tenancy column, rent note or rent receipt to support the claim of tenancy cannot be read in section 4 of the Act. This position is no more

res integra. (See Kashinath R. Kumbhar (supra)).

15. The argument advanced on behalf of the Respondents and which had found favour with the lower Court that the Petitioners will have to be non-suited on account of their statement made in the earlier proceedings under section 32G clearly overlooks the legal requirements of section 145 of the Evidence Act. That requirement has not been complied with in the present case. If it is so, the said statement is inadmissible in the present proceedings. It is possible that if the Petitioners were to be confronted with that statement, they would have given explanation as may be available to them and which aspect would have been required to be considered by the Court while evaluating their evidence. However, as the requirement of section 145 of the Evidence Act has not been fulfilled, the said statement cannot be used against the Petitioners so as to non-suit them in the present proceedings.

16. The argument that the plea of non-compliance of section 145 is being raised for

the first time before this Court also does not commend to me; for it is a pure question of law and, therefore, can be raised before this Court to assail the conclusion reached by the lower authority in that behalf.

17. The argument that there is no pleading in the application as filed by the Petitioners that the land was naturally grown grass land used for grazing cattle or, for that matter, inspite of remand, and an opportunity available to the Petitioners, no evidence has been adduced by them, in my view, will make no difference to the conclusion that I have to reach. The argument of the Petitioners is not that the naturally grown grass on the suit lands was used for grazing cattles, but, as found by the appellate Court, the suit land was used for the purpose of rab manure.

18. There is force in the argument canvassed by the Petitioners that even if the Petitioners fail to establish the factum of lawful possession, even so, they cannot be dispossessed from the suit lands and the right of the Respondents to claim possession in respect of the

suit lands has been extinguished by operation of law. It is rightly submitted that as the Respondents have failed to institute any suit for possession of the suit lands within the limitation period provided for in the Limitation Act, 1963, their right to such remedy has been extinguished. Even on that reasoning, the conclusion reached by the appellate Court will have to be upheld. While doing so, I would think it appropriate to observe that the relief in favour of the Petitioners will have to be moulded to such area out of the suit lands as would be identified as held by them during the measurement to be undertaken by the D.I.L.R. pursuant to the application already filed by the Petitioners. Such direction would do substantial justice to both the parties.

19. Accordingly, this Petition succeeds. The impugned order dated October 25, 1985, passed by the Maharashtra Revenue Tribunal is set aside and, instead, the order of the Appellate Authority dated March 25, 1983, is restored, subject, however, in respect of lands out of the survey numbers of the suit lands, to be

identified by the D.I.L.R., as held by the respective Petitioners consequent to the measurement in terms of the application preferred by the Petitioners. Rule made absolute on the above terms. No order as to costs.

(A.M.KHANWILKAR,J.)